THE RECORD
OF THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

EDITORIAL BOARD

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Association Activities

ON MONDAY evening, November 22, the Association in cooperation with the American Broadcasting Company began its series of discussion programs "On Trial." These programs broadcast over television (WJZ–TV Channel 7) and radio (WJZ–770) nationwide networks are designed to present discussions of great public interest within the framework of examination and cross-examination of expert witnesses. The television series will be broadcast every Monday evening from 8:00 to 8:30 P.M., Eastern Standard Time, and the radio version will be heard on Monday from 10:30 to 11:00 P.M., Eastern Standard Time.

The Executive Committee authorized the Association's participation in these programs as part of the program of the Special Committee on Public and Bar Relations, of which Judge Samuel I. Rosenman is the Chairman. In direct charge of the program is a special committee consisting of Garrard W. Glenn, Chairman, Mrs. Helen L. Buttenwieser, and Oren Root, Jr. James Lawrence Fly, of the Special Committee on Public and Bar Relations, will serve as liaison between that Committee and Mr. Glenn's committee. The Association will join with the American Broadcasting Company in presenting as trial counsel in the series, and as occasional expert witnesses, leading members of the New York bar.

President Patterson, in commenting on the new "On Trial" series, stated "The Association of the Bar welcomes the opportunity of assisting the American Broadcasting Company in the production of their program 'On Trial.' The Association believes the program to be a dignified as well as a popular discussion program and that lawyers, by participating, can contribute to a sharper presentation of the issues and to their better public understanding."

Robert Saudek, Vice-President in charge of Public Affairs of the American Broadcasting Company, said on the occasion of the first program, "We of ABC are delighted that the distinguished Association of the Bar of the City of New York will help in clarifying current issues through the 'On Trial' series. The addition of television to the radio medium must give a new dimension to the broadcasts."

David Levitan, member of the Public Law and Government Department of Columbia University, will act as consultant on the programs.

The subject of the first program was wire tapping. Justice Ferdinand Pecora acted as judge. Lloyd Paul Stryker and William B. Herlands were opposing counsel. The expert witnesses were Charles P. Grimes and William G. H. Finch.

On November 29 the subject was "Should Rent Control Be Tightened?" Edward J. Weinfeld and John Harlan Amen served as counsel. Expert witnesses were Tighe E. Woods, Federal Housing Expediter, and Herbert U. Nelson, President of the Real Estate Association. Harrison Tweed was the judge.

ON DECEMBER 9 and 10 the Committee on Junior Bar Activities, Frederick P. Haas, Chairman, will hold An Inter-Law School Competition at the House of the Association. Participating in the competition are nine law schools whose students will argue a case involving freedom of speech in the use of sound trucks.

The competition will be in the nature of a series of elimination arguments. Eight schools will argue the first round before a Moot

Intermediate Appellate Court. The four winners will then argue in two Moot State Courts of last resort. In this argument one of the schools will join as *amicus curiae*. The final round of arguments will be before a Moot Supreme Court of the United States. Law Schools participating in the competition are Brooklyn, Columbia, Cornell, Fordham, New York University, Pennsylvania, St. John's, Virginia, and Yale.

AT THE STATED MEETING on December 14 the Committee on International Law, Adolf A. Berle, Jr., Chairman, will present an interim report on the Draft Covenant on Human Rights and the Draft Declaration on Human Rights. The Committee will ask no formal action by the Association, because the final drafts of the two documents have not been approved by the United Nations, but will acquaint the Association with the Committee's present views.

At the same meeting the Committee on Bankruptcy and Corporate Reorganizations, Milton P. Kupfer, Chairman, will present a comprehensive report on suggested amendments to the law dealing with bankruptcy and corporate reorganizations. The Committee on Medical Jurisprudence, George H. Sibley, Chairman, will ask Association approval of a model statute providing a system for the care of alcoholics. The reports of the Bankruptcy Committee and the Committee on Medical Jurisprudence are published in this number of THE RECORD.

An important report by the Committee on the Bill of Rights, Lloyd Paul Stryker, Chairman, will be presented. The report, drafted by a sub-committee of which Allen T. Klots was Chairman, recommends the Association press for legislation setting up standards for future congressional investigations. Copies of the report will be mailed to the membership.

CLOYD LAPORTE, Chairman of the Committee on Post-Admission Legal Education, has announced that the January lecture to be

delivered by Chancellor Robert M. Hutchins of the University of Chicago, will be held on January 26 instead of January 11. Mr. Laporte also has set February 8 as the date for the lecture to be given by Chief Justice Arthur T. Vanderbilt of New Jersey. On December 7 Carrol M. Shanks, President of The Prudential Insurance Company of America, will lecture on "The Lawyer in Business, His Opportunities and Contributions."

On November 16 Professor Harry Shulman of the Yale Law School spoke before a large audience on "The Settlement of Labor Disputes." It is hoped that Mr. Shulman's lecture will be published in an early number of THE RECORD.

THE COMMITTEE on Foreign Law, John N. Hazard, Chairman, entertained at a dinner William L. Dale, Deputy Legal Adviser of the British Colonial Office, and also considered a number of reports from various subcommittees.

ON SATURDAY, December 11, the Special Committee on the Federal Courts, Edwin A. Falk, Chairman, will sponsor an address by former Associate Justice Owen J. Roberts, who will discuss the Committee's program for fortifying the independence of the Supreme Court. A buffet luncheon will be held at the House of the Association preceding the address, to which members and their guests are invited.

THE ENTERTAINMENT COMMITTEE, Judge James Garrett Wallace, Chairman, held a successful Fall Party on November 9. Members of the New York University Glee Club presented a musical skit entitled *Cox and Box,* and there was other informal entertainment.

The Committee has announced that the Annual Association Night will be held on April 6, 7, and 8 at the House of the Association and has requested all members who are interested in par-

ticipating in this year's show to notify Mr. K. Bertram Friedman at Cortlandt 7–0144.

ON SUNDAY, December 12, the Association and the New York County Lawyers' Association will hold a memorial service in memory of the late Chief Justice Charles Evans Hughes. The service will be held at the House of the Association at four o'clock in the afternoon. Former Associate Justice Owen J. Roberts and Judge Augustus N. Hand will speak.

THE HOUSE COMMITTEE, Franklin E. Parker, Jr., Chairman, has announced that the House of the Association will be closed on Christmas Day and on New Year's Day.

THE COMMITTEE on Courts of Superior Jurisdiction, Samuel M. Lane, Chairman, is working on legislation to create additional judgeships in the United States District Court for the Southern District of New York so as to alleviate the present delay in disposing of cases. Motion practice in the Southern District is being studied by the Committee with a view to making recommendations for its improvement. In addition a subcommittee has been appointed to study the practice of judges of the United States District Courts engaging in extra-judicial activities.

The Committee is continuing its work for reform of the calendar practice in the New York Supreme Court so as to further reduce the time interval between joinder of issue and trial, eliminate uncertainties and delays at the call of the Day Calendar, and make the court more attractive to commercial litigation. Ways are being considered either to cope with the tremendous influx of personal injury litigation in the Supreme Court or to refer it to the Municipal and City courts. Recommendations for improvement in the method of selecting jurors in New York County are also being considered.

THE COMMITTEE on Real Property Law, Jule E. Stocker, Chairman, at its meeting on November 15th, considered the interim report of its subcommittee on Landlord and Tenant Law. The report recommended the abolishment of the present provisions for arbitrations in the Commercial and Business Rent Laws, and the adoption of substitute procedures to stop the existing abuses.

THE ART COMMITTEE, Clarence J. Shearn, Jr., Chairman, at its organization meeting decided to hold in the spring an exhibition of members' paintings, drawings, sculpture, and photography. Rene A. Wormser will be in charge of the show.

The Committee also established a subcommittee under the chairmanship of Wilberforce Sully, Jr., to review the Association's collection of portraits, with a view to having the best ones restored and then hung. The Committee also will prepare for publication a catalog of the Association's art objects.

THE COMMITTEE on the Surrogates' Courts, Dermod Ives, Chairman, will continue its practice of reviewing legislation and will also soon release two reports, one dealing with problems relating to ancillary administration in foreign countries and one on proposed revisions of Surrogates' Court forms. The Committee also has a subcommittee studying the American Bar Association's Model Probate Code.

THE COMMITTEE on the Municipal Court of the City of New York, Frederick F. Greenman, Chairman, held a dinner in honor of Edgar M. Souza and presented Mr. Souza with a gift in appreciation of his past service as chairman of the Committee.

The Calendar of the Association for December

(As of November 15, 1948)

December 1 — Joint Meeting of Section on Drafting of Legal Instruments and Section on Wills, Trusts and Estates
Dinner Meeting of Committee on Insurance Law
Meeting of Committee on the Municipal Court of the City of New York

December 2 — Meeting of Section on Trials and Appeals

December 6 — Dinner Meeting of Committee on Copyright
Meeting of Section on Corporations
Dinner Meeting of Committee on Professional Ethics
"On Trial"—Radio Program, WJZ–TV (Channel 7), 8:00–8:30 P.M., EST, and WJZ (770), 10:30–11:00 P.M., EST

December 7 — "The Lawyer in Business, His Opportunities and Contributions." Address by Carrol M. Shanks, Esq., President, The Prudential Insurance Company of America.—Buffet Supper 6:15 P.M.

December 8 — Dinner Meeting of Executive Committee
Meeting of Committee on Unlawful Practice of the Law
Meeting of Committee on Arbitration

December 9 — Meeting of Committee on Foreign Law
An Inter-Law School Competition. Auspices Committee on Junior Bar Activities
Meeting of Section on Taxation

December 10 — An Inter-Law School Competition. Auspices Committee on Junior Bar Activities

December 11 — Saturday Luncheon followed by address on "Now Is the Time, Fortifying the Independence of the Supreme Court" by The Honorable Owen J. Roberts, Former Associate Justice of the Supreme Court of the United States.

December 12 Joint Meeting of this Association and the New York County Lawyers' Association in memory of Charles Evans Hughes, 4 P.M.

December 13 Meeting of Section on Labor Law
Dinner Meeting of Committee on Municipal Affairs
Meeting of Committee on Public and Bar Relations
Meeting of Committee on State Legislation
"On Trial"—Radio Program, WJZ–TV (Channel 7), 8:00–8:30 P.M., EST, and WJZ (770), 10:30–11:00 P.M., EST

December 14 *Stated Meeting of Association and Buffet Supper–6:15 P.M.*

December 15 Meeting of Committee on Admissions
Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations
Meeting of Committee on Labor Law
Meeting of Section on State and Federal Procedure

December 16 Meeting of Section on Trade Regulation

December 20 Meeting of Library Committee
"On Trial"—Radio Program, WJZ–TV (Channel 7), 8:00–8:30 P.M., EST, and WJZ (770), 10:30–11:00 P.M., EST

December 23 Dinner Meeting of Committee on Courts of Superior Jurisdiction

December 27 "On Trial"—Radio Program, WJZ–TV (Channel 7), 8:00–8:30 P.M., EST, and WJZ (770), 10:30–11:00 P.M., EST

Inside the English Courts

By Wm. Dwight Whitney

Whenever any public gathering is held of British and Americans, it is a convention always to refer to the great heritage of common law which is shared by both. When the after-dinner speakers have finished, the listeners must go away with the impression that law and the law courts in England and America are pretty much the same.

A second widespread impression is that the English outlook on substantive law, if not perhaps on procedure also, is more old-fashioned than the American. This is fed by the practice in our American law schools of starting off most subjects in case books with one or two venerable English cases, and then following them by a number of more recent American cases, a practice which suggests that English law is out-moded and that American law is highly modern.

These then are our two major conceptions,—that English law is like American, only more old-fashioned. How true these conceptions are, will be tested as I go on.

Let us begin with the structure of the English courts. This structure is strikingly like that of the New York state courts. What New Yorkers call the Supreme Court is also called the Supreme Court of Judicature in England, and just as the Appellate Divisions are within the Supreme Court here, so the English Court of Appeal, which now sits in four divisions, is within the Supreme Court there. Above the Supreme Court is the House of

Editor's Note: Mr. Whitney, a former chairman of the Admissions Committee and member of the Executive Committee, attended Yale and Oxford universities. He was admitted to the bar of New York in 1925 and served as Special Assistant to the U. S. Attorney and Special Assistant to the U. S. Attorney-General. In 1941 he was called to the English Bar (Inner Temple). Mr. Whitney served in the RAF in World War I and as Major, Scots Guards, in World War II. He was an executive assistant of the Lend-Lease mission to England and London representative of the U. S. Coordinator of Information. Mr. Whitney is the author of "Who Are The Americans" published in London in 1941.

Lords, which hears appeals only upon grant of permission either by the Court of Appeal or by the House of Lords itself. Below the Supreme Court on the civil side are the County Courts, which have very similar jurisdiction to our City Court and Municipal Court; and in addition there are the various Criminal Courts, too complicated in structure to be described in this lecture.

On the civil side, the courts of first instance in the Supreme Court are known together as the High Court of Justice. The High Court sits in three divisions, the Kings Bench division devoted to common law, the Chancery Division (which deals principally with estate, trust, corporation and bankruptcy matters), and the hybrid known as the Probate, Divorce and Admiralty Division. (You won't be surprised to hear that the cases heard there are about 98% divorce and 2% admiralty.) In the High Court one judge sits, as here, three judges in the Court of Appeal, and five judges (on great occasions seven) in the House of Lords.

But the similarity to our courts in structure hides a complete dissimilarity in inherent character. To explain this, it is necessary to descend from the court level and to explain the composition of the bar.

Every lawyer in this room knows that the English legal profession is divided into two independent branches—the solicitors and the barristers. But what is always hard for an American lawyer to realize is that this division is real, and that there is no exception to it. However, there just is no one in England who corresponds to the American idea of counsel—someone who will do everything from meeting the client, through advising him and drafting his papers, to going to Court for him.

The man who is always called "lawyer" in England, or sometimes "legal adviser", is the solicitor. He fulfills all of the usual functions of the American lawyer, except only, *first,* trying and arguing cases in the Supreme Court and House of Lords, *second,* drafting pleadings in those Courts and, *third,* giving opinions of law. No solicitor is permitted to engage in any of those functions; and that means what it says, that is to say, he just cannot and does not perform those functions. Correspondingly, counsel, which

is the English word for barrister in the same way that lawyer is the English word for solicitor, cannot and does not perform functions other than those three. Ninety-five percent of all the work done by lawyers is in England done by solicitors. With the very rarest exceptions, all American lawyers are really solicitors, and this goes even for most American lawyers who call themselves litigators, for the litigator spends a major part of his time interviewing witnesses and generally preparing cases in a way that in England is also reserved for the solicitor.

For an analogy to the English legal profession, you must go to the medical profession in our larger cities. The barrister corresponds to the surgeon and specialized consultant, the solicitor to the general doctor. An Englishman would be just as surprised to see his solicitor going into the High Court on his behalf as an American would be if he should arrive at the hospital for a major operation on which his life or death would depend and find his family doctor sharpening up the knives to cut him open.

It is not that the English deliberately organized their system that way. The system grew with the centuries. To understand the barrister, you should recall that he evolved out of the monkish tradition of the Middle Ages. The essence of a barrister is that he is a scholar, a learned man. [Every barrister in the House of Commons must invariably be referred to in debate as "the honorable and learned member from" wherever it may be, say the Chesterfield Division of Derbyshire, just as every soldier or sailor member must be referred to as the "honorable and gallant member" from (say) The High Peak Division of Derbyshire.] In his chambers, the barrister is among his books, removed from daily life, just as the monk in the Middle Ages lived in his monastery and engaged in studies, either classic or religious, which were outside the range of understanding of the layman.

It is compulsory for every barrister that his offices (known, by the way, as chambers), be in one of the four Inns of Court, which are in effect modern monasteries, with cubicles for the practicing monks. As of the four Gray's Inn is rather too far away from the courts for the active barrister, you will in practice find

practically all chancery barristers within the little circle of Lincoln's Inn and all common law barristers within the two Temples, Inner and Middle. It is as if all New York lawyers practicing in the courts were required to have their offices in the Lafayette Building.

Of course, the chambers aren't called cubicles. They are popularly called "stables". Three or four, or sometimes more, barristers will club together in a suite of rooms, with a single clerk, and you will speak of being in the same stable as Patrick Hastings, say. The real center of the stable is the clerk, who arranges all the business details, makes the appointments, even fixes the fees, and takes a commission on each,—thus, 50¢ on a $5 fee for a beginner to go to the Traffic Court or $10 on a $420 (100 guineas) fee for a K.C. to open a case in the High Court. The relation of clerk to barrister is not unlike that of theatrical agent to star, and the relation is so established that the clerk's fees are added to the barrister's and paid in addition to the barrister's on the same bill. The bill, of course, goes to the solicitor, and is the responsibility of the solicitor, not of the lay client.

This all fits into the fact that the barrister is not to be troubled with business. His essential function is to know the law. It is in consequence of that, that he is entitled to argue and try cases in the higher courts. A solicitor may argue and try cases in the lower courts, however; and many solicitors are indeed actively engaged in litigation in the county courts and lower criminal courts, the theory being that there will be less law points in the lower courts and that the double solicitor–barrister team may be too expensive there. You will observe that there must always be a solicitor; it is the barrister who is the extra one.

The barrister is, to put it simply, a consultant first, and a surgeon next. It follows that, with a very few exceptions, he is a specialist. And the fact that he is a specialist means that the phrase "looking up the law" is unknown in England. For all practical purposes, on most of the questions of law that come before him, the barrister knows the answer, for the simple reason that he must know and be familiar with all the decided cases in

his own specialty. Of course, he often refers to books, but more to refresh his recollection or check his impressions than with any idea that he has to begin at the beginning.

Similarly, in drafting pleadings, the English barrister almost invariably writes them down, generally in longhand and frequently at home in the evenings, without any reference to any form, for the simple reason that he has prepared so many pleadings in the past that the proper phraseology is second nature to him. Yet, although English practice provides, just as does New York practice, for motions to dismiss complaints and for the various motions to correct them, these motions are almost unknown in English practice, because complaints are there drafted only by experts. Sir Valentine Holmes, K.C., perhaps the leading common-law barrister in England today, and from whose "stable" I had the privilege of finding my way around the English courts, told me that one of the saddest incidents in his career was that he once had to move to dismiss a statement of claim [for which you may substitute the American equivalent term "complaint'] on the ground that it failed to state a cause of action, and that when he had won the motion, the other barrister went back to his chambers, put on his hat and left the Temple forever, saying to an associate, "Holmes has ruined me, for he has moved successfully against one of my complaints, and I could never hold up my head again."

In consulting a barrister about the law, you are apt to have this sort of experience [I have a particular incident in mind]: When you have explained the problem, he may say: "I believe there was a case very close to that about 1877. I think it was called the Smith case." He will then go to the walls of his own room, which are, of course, entirely covered by law reports, pull down one or two books and then say, "Ah, here it is in 1875. Now let's see just exactly what it was that the Lord Chief Justice said."

I turn to the solicitors. As compared to perhaps 100 barristers who actually make a decent living out of their practice in London, there are over 5,000 active solicitors, some working by themselves, many working in firms similar to those known to us. To

enter a solicitor's office, except for its old-fashioned appearance (old furniture, rugless floors, coal fires, black tin boxes for files with the client's name painted on them), is like entering a New York lawyer's office, for a solicitor is simply our familiar friend the office lawyer in his manifold incarnations. Not merely do solicitors fill all the functions of interviewing clients, preparing papers of all sorts, taking up matters with government officials, sitting on boards of directors, et cetera, et cetera, but in litigation also they have managing clerk's offices, just as we have, and through those offices all the papers in law-suits are filed (even though the papers are written by the barristers). Finally, they interview all the prospective witnesses.

Solicitors and barristers alike were unusually embarrassed by the German visitation from the air. In the early days of the blitz the German planes liked to follow the course of the rivers; and the Temple, with its famous buildings and gardens, is by the Thames. The barrage balloons kept the Germans up to such a height that they could only see the river, and their bombs dropped accordingly. Since that time, under the strict housing control in England, it has been forbidden to build any new buildings other than dwelling houses, and the consequence is that the repairs in the Temple have been so slight that it is almost the normal thing for barristers now to sit two in a room.

The solicitors were equally burdened, and with more permanent effect, for all through the City of London solicitors' clients' files were being burned in the night. Every day in the courts you would hear an explanation that such and such evidence was unavailable, as it had been destroyed in the blitz. I am thinking of one firm of solicitors, all of whose furniture in the partners' rooms consisted of original 18th Century pieces of great beauty and value, and which not merely saw them destroyed, but saw three successive subsequent offices likewise destroyed, so that they are now in their fifth office in eight years.

In the winter months you can picture the typical English lawyer—solicitor and barrister alike—working with his overcoat and gloves and frequently hat on, with a rug around his knees, at a

temperature of perhaps 45° to 50°, with the cold and fog gently drifting through the cardboard that has replaced what was a window before bomb-blast reached it. But it is wonderful to see how easy it is to endure hardship if the same hardship is the usual rule for all those around you. Having just come from the Temple, I remember how amusing it seemed in a government office in Washington in 1943 to hear that some of the employees were staging a sit-down strike because they said that they couldn't continue their war work under the conditions imposed by Secretary Ickes, in consequence of which the thermometer had actually gone below 65°. But perhaps they did not have any sweaters; and any English Judge, solicitor or barrister would not be at all embarrassed to have the sleeve of his sweater showing beneath the sleeves of his coat in the courtroom. After all, he may be wearing a gown, but he wants his wrists to be warm.

War and poverty are great levelers; but they have been received with good grace by the English legal profession. An even greater leveler is the income tax. The tip-top barristers and solicitors, in London as in New York, may make more than $100,000 a year; but the tax on $100,000 in England is $80,000, and the tax on the second $100,000 is $97,500, or $177,500 in all. The democratic simplicity in dress, which we have always thought characteristic of America, is now even more characteristic of London.

But we must go back to work in the solicitor's office: The active solicitor will never waste his time on the law books beyond looking at, say, the statute itself or a leading text book. If a question of law arises which disturbs him, he will dictate a so-called "brief" or "case for counsel", consisting of an extensive statement of the facts, perhaps with a very brief addendum of the solicitor's own impression of law, and a statement of the question, then tie it up with a ribbon around it, and send it by a messenger down to the chambers of whatever barrister he may select as a specialist in that subject, asking for an opinion. This is known as "instructing counsel."

Solicitors are forbidden to give opinions and are liable in dam-

ages to the client if they give wrong advice. But, of course, in daily practice, your solicitor, or at least one of his partners, knows perfectly well what the correct answer is to the usual problem. When the solicitor does meet a doubtful point, he does not waste his time looking up law, but sends off an inquiry to the specialist in the Temple or Lincoln's Inn. By the same token, he does not burden himself with the effort to know how to ask questions in Court, or how to conform to the rules of evidence or to the rules of pleading. For all that department, which I have compared to surgery, he also relies on the barrister.

The barrister in effect is in the operating room (that is to say, the court-room) every day. As he is chosen, not by the outside lay-client who has not the remotest idea who really is effective in court or who really knows the law, but by the professional solicitor, and as the professional solicitor knows from the law reports and the gossip of the profession who's who among the barristers, much as trainers will know race-horses, the layman gets (through his solicitor) the benefit of the best barrister on any subject. That best barrister is, therefore, so much in demand that he is in court every day of the term, and often on two or three cases in the same day.

This brings me back to the courts. The judges are all ex-barristers. It would be unthinkable for a solicitor to become a judge, although occasionally solicitors change their minds and become barristers, just as occasionally barristers change and become solicitors. As the child is the father of the man, so the barrister is the father of the judge, and all judges are really simply barristers in their next stage of development.

It is an absolute rule of the bar that every barrister must work as an individual and not in a firm. He must be responsible for his own opinion; and this is the conception of his duties that remains with him to the last. When he becomes a judge, he follows the same rule. That is why you will see in the reports of the House of Lords that each of the judges delivers his own opinion, known as his speech (because made supposedly to the whole House of Lords). On an appeal court the other judges will often

merely agree with the first opinion, but must still independently express that agreement.

Taking the Court of Appeal as an example, the presiding judge speaks first, then the judge next in seniority on his right and then the one on his left. The presiding judge is known to the other judges as "My Lord." A story is told of an extremely able but sardonic barrister who, having recently been appointed to the Court of Appeal and sitting as junior member, retained his earlier views of the abilities of his brother judges. After listening to a long opinion from the presiding judge in favor of the plaintiffs, and to an equally long one from the next senior judge in favor of the defendant, he resolved the conflict by saying caustically, "I agree with the reasons expressed in favour of the defendant by my learned brother, but with the result reached in favour of the plaintiff by My Lord."

As success is more amusing than failure, let us trace together the career of a typical successful barrister. It is a career far more stereotyped than we know in America; and almost all successful barristers follow it, for regular promotion through the successive stages of life's journey is the key to it. Coming from the university, the fledgling barrister has no practice and cannot expect any for some time. If he has no income of his own, and no rich uncle to stake him, he writes newspaper articles or edits law books in his spare time. He goes into the chambers of an active older barrister and helps him with his cases, without any compensation. This is known as devilling. The devil sits in the corner of the room of the older barrister but never says a word during conferences, just has the privilege of listening in. At the end of the day, he may exchange a word with his senior, or be given an opportunity to participate in drafting a pleading, and the next morning he can go with his senior and sit beside him, in wig and gown, just as though he were regularly in the case.

Then one day, quite unexpectedly, may come the moment fraught with destiny when (and this is quite a characteristic example) his senior is engaged in two cases at once and has gone off to the more important one, thinking that nothing needs to be

done for the moment in the first one, and the other side suddenly stops examining the witness much sooner than was expected. Our young man has to arise and conduct the cross-examination. The solicitor sitting behind him is less surprised than worried, for this is by no means an uncommon event. The solicitor does not like to think what his client may say to him afterward, for his client had been told that he would be represented by Sir Patrick Hastings, say, and here is Mr. 27-year old unknown.

For the young man, on the other hand, this is his chance in life. We will asume that he does well enough. Our solicitor will then say to himself, "That young man is first-rate, and the next time I have a case for someone who cannot pay more than a small fee, I will retain him to handle it for me." Now the small cases begin to come in to our young man, and after two, three or four years, he is no longer working on someone else's cases but has become fully occupied on his own. After another six or eight years he has become "established", as the phrase is. His daily life runs like this. He is in court every day from 10:30 to 4:30, and then will have a series of conferences in his chambers, of a half-hour or an hour each, arranged by his clerk, with solicitors and clients in other cases or seeking opinions, one at 4:45 say, one at 5:15 and one at 6. He will then go home with a brief bag full of briefs. Next morning he will dump on his clerk's desk perhaps three or four of these,—a hand-written complaint in one case, a hand-written motion for a bill of particulars in another, and opinions in a third and fourth. I have seen Sir Valentine Holmes arrive in the morning with as many as ten such products. It was his practice to be called invariably at 4:30 in the morning, and he always worked straight through from 5 until 8 (A.M.).

I forgot to say that during the one hour luncheon interval, the Masters (a very excellent English institution,—former barristers, appointed with an $8,000 annual salary, for the purpose of hearing all motions, and thereby leaving the judges free for trials on the merits,) hear those motions which are to be argued by barristers. Solicitors may argue motions before the Masters, and generally do so; but if the solicitors decide that they want a

barrister to argue a motion, that motion will customarily be put down at 1:30 so that the barrister may argue it between 1:30 and 1:55, and get back to his regular trial court room at 2 o'clock.

After ten years, our busy and successful barrister, still known technically as a "junior," has the privilege of becoming a K.C. or "leader", that is to say, "takes silk" (substitutes a silk gown for a stuff one), provided that the Lord Chancellor, who sits on the Woolsack at the apex of the judicial system, will approve his doing so. More likely, he continues his busy junior practice until he has been at it for (say) fifteen years, at which time he probably will have a nervous collapse, and his doctor will say to him, "You are nearing 40 now, Mr. Jones, and you must stop working so hard." He thereupon applies to the Lord Chancellor for leave to be made a King's counsel. If he has a good standing at the bar, such leave is invariably granted.

There is a nice little ceremony for the induction of new King's Counsel. Each must make the round of all the courts, accompanied by his clerk, and wearing full court costume of black satin knee breeches, silk stockings, buckle shoes, and with a full-bottomed wig, bow to the court from the front bench, the little ritual being that the judge then notices that he has moved up into the front bench reserved for leaders and says: "Mr. Jones, do you move?" To which the new K.C. again bows, in evidence that he has no motion to make, and then leaves the court.

But there is more than that to becoming a K.C. He may not now appear in court except when accompanied by a junior, and he probably will get no more practice at all at drafting pleadings or appearing before Masters, as he may not do those things except in company with a junior. He will only be asked for an opinion in important matters, as it is considered better practice even then for him to have a junior with him.

These are all characteristics of the practice of a leading senior counsel in this country. The only difference is that in England they are settled by rule; and there is no going back. Once a leader, you can never again be a junior, just as once a judge, you can never go back to practice.

It is to a junior that the solicitor entrusts all the early stages of the case, and a leader is brought in only in big cases, and generally on the eve of trial.

If the solicitors who yesterday thought very well of our new K.C. as a draftsman and general all-around junior, don't consider him up to the mark of taking the leading part in major trials of the character which warrants having two court lawyers, his career is pretty well at an end. In that event, the Lord Chancellor may find for him an appointment as a judge of the county court, for example, or as a Master, or he may take to editing law books, or go down the scale in some other way, even perhaps so far down as to go into politics.

But we are dealing with the typical successful barrister. He is soon spending every day in the Court Room as the spokesman in important cases, with a junior always there to advise and assist him. And as you picture him there arguing his cases, you must appreciate that all English cases are decided exclusively on oral argument. The brief in England is something that the solicitor hands to the barrister in instructing him to undertake the case. No brief is ever handed to any court. In effect, the barristers participate with the judges in resolving the cases, and there is a constant interchange of question and answer, and discussion, between them. No time is wasted on points of evidence or procedure, as all the participants are experts in evidence and procedure, and they just don't make mistakes. If once in a rare while the barrister on one side comes to the verge of some transgression in evidence or procedure, the judge probably picks him up at once, or, alternatively, his opponent starts to rise from his seat saying something like "Oh, I say," and the judge rules at once. The result is that the real merits of the case are thrashed out orally in the fullest possible detail, and without procedural interruption, in appeal courts as well as in the trial court. And very little time is spent in discussing decided cases, as their rules also are pretty well known to all participants. When a barrister does propose to refer to law books, he will have given to the clerk of the court a list of the books, and the clerk will have put in

a rack beside each of the judge's desks a full set of the books in question. When the barrister comes to refer to the case, each judge will look at the case in the original, and the colloquy is apt to go somewhat like this:

> Barrister: "If I may read to your Lordships what the Master of the Rolls said in Jones and Jones in [1930] 3 King's Bench just below the middle of page 200." He starts to read. In about 30 seconds the presiding judge may say, "Oh, the Master of the Rolls was only referring there to the earlier case of Smith and Smith, distinguishing it, and I really don't think his words are open to the construction that you are putting upon them." The other judges may say: "Quite so, quite so" or some similar expression; and then all the books will be closed and put away and forgotten. Or the counsel may press the point, and go on to argue about Smith and Smith, in which case he is free to go on as long as he likes, although he will probably be subjected to a very lively cross-examination from the bench.

You will now begin to see why it is that English opinions are expressed in the colloquial tone. They are customarily delivered off the bench at the conclusion of the trial or oral argument.

As an American lawyer, I found that the most thrilling moment in an English court was to come to the end of what might be a week's trial, and hear the judge immediately begin: "In this case, the plaintiff charges et cetera, et cetera," and continue for maybe one or two hours, working entirely extemporaneously from the papers spread out before him and from his hand-written notes, summing up the pleadings, evidence and arguments on both sides, and deciding the case. One thing that makes this possible is that the judges work very hard throughout the court day. They are constantly taking notes. The trials are stenographically recorded, but the judge takes his own very full notes in addition in his own hand.

The court opinions (judgments, they are called in England) are quite ruthless. Few opinions on the facts are reported, for the various English law reports do not print more than a small per-

centage of them, selecting those that are interesting for law points. In judgments on the facts, you will constantly hear judges saying that they have rejected this or that witness as a "witness of untruth" and accepted such and such other one as a "witness of truth." That is their job; and they do not flinch from it. There are many fewer English cases before juries, and indeed juries are rare in civil cases at all.

To an English judge, the time that he is sitting on the bench is the time for work, and he is at it hammer and tongs from the first minute that court opens, perhaps in the hope that when court adjourns he will be able to go to the country and play golf. He is an active participant in the examination of witnesses and in everything that goes on. Why shouldn't he be? He is just like the counsel before him, only older and more experienced.

No time-wasting is tolerated in court. You are not even allowed to use slang expressions in your argument. I remember once when myself trying a case (I hasten to interpose, for a client who could only pay a small fee) before the Lord Chief Justice, he took me up on an argument during the summing up and expressed his disagreement. I said: "Well, we will wash that argument out." The Lord Chief Justice looked as if he had been struck, and said: "What in the world was that you said, Mr. Whitney?"

This really ought to be more than a digression, as probably the one single feature which most decisively distinguishes the whole atmosphere of the English courts from the American courts is this practice of the precise use of words. It grows out of the entire tradition that court lawyers are and must be scholars, and that judges are drawn only from among those very few who, precisely because of their expertness in the tools of the trade, that is to say, in the use of words, have risen over years of continued experience to the top. This brings me back to our friend, the successful barrister.

When we left him, he was trying and arguing cases as a K.C., having begun that career at the age of 40. He has now reached, shall I say, 50. It is almost automatically that he now becomes a

judge. There are, of course, instances of men, who, although successful leaders, are unfitted by temperament to be judges, and there are instances of men who refuse the position. But the really outstanding leader will generally be offered an appointment to the bench. Politics do not enter into it at all, although it was said that Lord Halsbury remarked as Lord Chancellor that he did not see why he should appoint a Liberal if he could find a Conservative who was just as good. Even the Socialist regime has not yet changed this; and the two new High Court judges appointed this month, and two new Appeal Court judges, both promoted from the High Court, are (I believe) all of them Conservatives.

Almost all appointments to the higher courts are by promotion. Once in a rare while some very great barrister who has also been active in political life becomes Lord Chancellor or in some other way a judge of a higher court, without having passed through the lower courts. But in a clear majority of the cases, the higher courts are reached by promotions. It follows that most trial judges are between the ages of 50 and 65, most Court of Appeal judges are in the 60s, and the normal Law Lord is in the late 60s or early 70s.

Surveying the career of our typically successful practitioner in the English courts, as a whole, we must recognize that it is just not possible in the United States for any one to attain the same degree of proficiency that he has attained. But nothing is bought in this world except at a price. Unquestionably, the English barrister and judge, although a master, quite beyond our standards, of the use of words, and of all the technique of legal analysis and trial in accordance with common law rules, retains to the end a narrower view-point than may be found within the American bench and bar, and certainly performs a far narrower function.

That judges are created regardless of political party affiliation, and that trials are so expertly conducted as to be the admiration of the whole world, is the natural converse of the fact that the courts do not pass on major economic questions or feel free to

develop new rules in accordance with what the judges may consider to be their own standards of equity. In England equity means a body of rules, developed in all their essential outlines more than a century ago, on particular subjects. There is no idea that the judge could change a rule or develop a new one in order to do what an American judge would call "equity."

But there is, after all, a real value to the ordinary layman in knowing where you are with the law. The English Courts and lawyers still hold absolutely to the conception that it is better that the law be sure than that it be right. It is an unbreakable rule that courts cannot reverse themselves or overrule prior decisions except of lower courts. And generally when decisions have stood for some years, even the higher court will not feel free to reverse them. In 1943, when the rule in the Coronation cases was reversed by the House of Lords, there was considerable comment at the bar that it was a shocking thing that the House of Lords should have felt free to reverse a rule of 40 years' standing in the Court of Appeal just because they disagreed with it. Nonetheless, they would not and could not reverse an earlier rule of their own.

An aspect of this same atmosphere is that it would be unthinkable in England for a court to seek to ascertain the intent of Parliament independently of construing the words that Parliament has used. No reference may be made in court to Parliamentary debates or to any other evidence external to the words of the statute itself.

English law today is based on statutes to a much greater extent than in any state of the United States. The fact that the United Kingdom is a smaller country than the United States tends to obscure the fact that England is a single legal jurisdiction much larger (let alone with a more continuous record of experience) than any of our states. And the statute law of England is far advanced beyond that of New York.

This is particularly true on the Chancery side. Thus, the Companies Act, which corresponds to our Corporation Laws, and the various acts relating to real property and estates and trusts, are

so comprehensive in England that an English draftsman, for example, can make his documents much less complicated than is necessary in this country, for a wider field of property law is covered by existing statutes and can be brought into legal documents by merely incorporating standard clauses by reference.

It may be interesting to mention that most of these great comprehensive modern statutes in England are worked out, not in the House of Commons, but in the House of Lords. Because the House of Commons is more occupied with such major national problems as would with us be entrusted to the Federal government, it is in the House of Lords, which has a quieter atmosphere, more time on its hands and a much larger number of the most able lawyers among its membership, that more detailed legislative work is done in those fields which in England are sometimes aptly referred to as "lawyers' law."

It follows that a larger percentage of time in the English courts is taken up with mere interpretation of statutes.

The work of the courts is with words. And as the work of the courts is with words, so the moments of humor that are tolerated in the court-room all relate to the way in which words are used. The convention is that because judges and lawyers are in the court-room to work, no time is permitted for humor. But humor is something that human beings cannot do without in the course of a long morning or a long afternoon, so the humor that is accepted as permissible is the humor that comes from a neat twist of words, and does not call for loud laughter, but rather for a twinkling of the eye in passing while the case presses on.

An example occurs to me from the argument of the case of Coca-Cola Company and Pepsi-Cola Company, in which the counsel for Coca-Cola, in an effort to rule out the defendant's use of the dictionary to show that the word "Cola" meant an African nut which was in fact used as a beverage, suggested that the dictionary could be used only for the primary, and not for the secondary, meaning of words. Five law-Lords were sitting, presided over by Lord Maugham, brother of the famous author. Lord Maugham said: "Oh, I don't really follow that argument at

all. Surely you can look at the dictionary under the word 'water', for example, and cite the court to the statement that it has been used as a beverage, a proposition which I understand some people are prepared even to support." He pressed right on to the next point, acting as if he had said nothing out of the ordinary, and all the judicial and legal eyes in the room twinkled as if to say "That was a good one."

Some of you may have heard of the incident before Mr. Justice Darling, who, while still a trial judge, had been appointed a Privy Councillor, a post usually reserved for judges of the Court of Appeal. A barrister who had recently been knighted for outstanding services to his political party was addressing the court. Judge Darling said as to one point: "I really do not follow that argument, Mr. Smith." The clerk of the court hastily arose and whispered something in the Judge's ear. Whereupon the judge said: "I do beg your pardon, Sir Eric. I did not realize that you had received the honor of knighthood, as in my younger day only the leading members of the bar, such as the Attorney-General and Solicitor-General, were knighted." To which Sir Eric replied: "And I believe that in that day, Your Lordship, only the more distinguished members of the bench were made Privy Councillors." Justice Darling's response was: "A knightly thrust, Sir Eric." And the case went on.

Many of you will have read that delightful first volume of Marjoribank's Life of Lord Carson and will recall the incident when Carson had just been appointed King's Counsel. It happened that Mr. Justice Kekewitch (who, by the way, had quite the lowest reputation in his day among the judges for ability) was absent from his court-room when Mr. Carson had come through the courts in his silver buckles and knee breeches, but that the next day it was before Kekewitch that Carson happened to have his first case as a K.C. As Carson started to speak, Kekewitch said: "I don't hear you, Mr. Carson." Carson raised his voice, and Kekewitch said: "I don't think you catch my meaning, Mr. Carson. I cannot recognize you in this court until you have

come here properly in court costume and been recognized." Carson replied: "I came yesterday, Your Lordship, but Your Lordship was not here, and I apologize." Kekewitch went on: "I have half a mind to send you back and have you come properly before I hear this case." Thereupon Carson dropped his voice to the tone in which he had uttered his first sentence, and turning to his junior, said: "That is the sort of rude thing that he would do." Kekewitch bridled and said: "That verges on contempt of court." Carson's final reply was: "I apologize, Your Lordship. I had understood you did not hear me."

The story is illustrative. First, the forms must be complied with. In all branches of English life you will find a desire to give both aspects of life due recognition,—the form and the substance. Utterly different rules apply to both. The positions of King and Prime Minister provide an example at the top of the system. So in the court-room, no English barrister or judge would wish to go without a wig and gown, but the fact that he is wearing them does not in any way occupy his thoughts. His whole attention will be given to the substance and merits of the case on argument, although onlookers will probably notice only the forms.

The second point of the Kekewitch story is that Carson could afford to be completely rude to the judge, as he was, because the rudeness consisted in a play on words, which was therefore acceptable, and for the further reason that it would never occur to either the judge or himself or to anyone else that the judge's own personal feelings would in any way affect his decision.

Here again, I illustrate from a personal experience. I went with Mr. Romer, K.C., now Mr. Justice Romer, to an argument which he made before the House of Lords, when his father, Lord Romer, was sitting. No one thought it at all out of the ordinary, except perhaps I, and I was considerably intrigued by such colloquies as the following:

> Father to son: "We are all familiar with that line of cases to which you refer, Mr. Romer, and we don't think that they are applicable in a case like yours." Son to

> father: "I suggest to your Lordship that you have overlooked the construction that has been put upon them by this Court in the subsequent case of Blank v. Blank."

And so it went on.

This wonderful freedom from suspicion is another aspect of the capacity to see relationships in two aspects—form and substance—of which I have already spoken. The Englishman makes a rigid distinction between work and play. It is easy for him to joke at one moment and stand rigidly at attention the next. This is illustrated in the etiquette of the bar, according to which during the working hours the rule of seniority is so rigid that motions are called up in strict order of seniority of the counsel who are there to argue them. But during the hours off duty there is an equally rigid rule that the newest member of the bar must never call any other member of the bar, even the most senior and revered one, by any title (not even "Mister"), but must deal with him in easy intimacy as a brother and equal in the fraternity of the bar.

When I was in the British Army, I learned the first day that I must salute the junior officer only next senior to myself if I passed him on the parade ground, but that I was to treat the highest general in the regiment, if I were speaking to him in the regimental mess, with exactly the same easy familiarity with which I should treat that 2d lieutenant.

An old civilization develops innumerable rules. When you know and practice the rules, you can enjoy them, without any feeling that they interfere in any way with the merits or substance of what you are dealing with.

I do not myself believe that we have yet begun to appreciate adequately in this country what an enormous problem we are setting ourselves in the law by having cut ourselves so far adrift as we have done in recent years from all the old rules. I often wonder about that poor workingman who was injured on the Erie Railroad, and who was deprived of any recovery because the Supreme Court, without prior oral argument on the question at all,

conceived that his case would be a convenient one in which to overrule *Smith v. Tyson.*

While our courts pursue what appears to them the conscientious and enlightened task of disrupting, by narrow majority votes, and after a half hour or so of oral argument, necessarily superficial, rules that have been settled for a very long time, and on the basis of which laymen in general have been ordering their private affairs, it at least gives one pause to realize that under another system of law which is supposed to be so like our own, there is a rigid and inflexible rule that no prior decision can be overturned by the same court without legislative action, and a conception universally accepted, even by an advanced left-wing socialist regime, that that is a better system for the ordinary man. Which is indeed the better view-point, I am not presuming to say. I am only presuming to suggest that a visit inside the English courts must carry to the mind of an American an appreciation of what a heavy burden the free legal thinking of our generation in America may impose upon the laymen who must pay the inevitably consequent price of amateurism and uncertainty.

Committee Reports

COMMITTEE ON BANKRUPTCY AND CORPORATE REORGANIZATIONS

INTERIM REPORT AND RECOMMENDATIONS*

INTRODUCTORY

Your Committee on Bankruptcy and Corporate Reorganizations held its organization-meeting on 16th June. It divided its program for the 1948–9 Association year into four sets of projects for study, and set up the following four Subcommittees to handle them:

Subcommittee on General Bankruptcy
Chairman, Selig J. Levitan

Subcommittee on Chapter X
Chairman, Daniel James

Subcommittee on Chapter XI
Chairman, W. Randolph Montgomery

Subcommittee on Section 77
Chairman, James L. Homire

It scheduled four stated meetings for Wednesday, October 6, 1948, Wednesday, December 15, 1948, Wednesday, February 16, 1949, Wednesday, April 6, 1949, and at such other times as its work might require.

During the summer months, all of the Subcommittees held meetings, at which they considered the legislation within their scope that had been introduced in the 80th Congress, and additional proposals for approval by the Association and (if so approved) introduction in the 81st Congress.

At the Committee meeting of 6th October, the Subcommittee on General Bankruptcy legislation, chairmaned by Mr. Levitan, and the Subcommittee on Chapter XI, chairmaned by Mr. Montgomery, presented reports which were acted upon by the full Committee, and are hereby tendered for the consideration and action of the Association, in the form of resolutions hereafter in this report set forth.

The Subcommittee on Chapter X also presented an *ad interim* report dealing with portions of that chapter, upon which the full Committee took action. But since the Subcommittee's consideration of necessary changes in Chapter X is not yet completed, the Committee resolved to withhold all requests for Association action on Chapter X until it could present a report

* This report will be presented to the Stated Meeting of the Association, December 14, 1948.

dealing with it as a whole, rather than piecemeal. Such recommendations will be tendered to the Association at an early subsequent Stated Meeting.

Parenthetically, certain matters not germane to this report seemed appropriate for consideration either by this Committee or the Committee on Uniform State Laws. Through the extremely helpful cooperation of Henry Harfield, Esquire, Chairman of the latter Committee, these matters were divided between the two committees in appropriate fashion, and the point is mentioned so that this Committee may acknowledge to Mr. Harfield and his colleagues its appreciation of that cooperation, which avoided even the possibility of conflict between the two committees.

The Committee makes the following report and recommendations to the Association:

I

GENERAL BANKRUPTCY LEGISLATION

(A)

H.R. 5693[1]

This bill, which was introduced on March 3, 1948 by Representative Chauncey W. Reed of Illinois, Chairman of the Bankruptcy Committee of the Judiciary Committee of the House, was sponsored by the American Bar Association and the National Bankruptcy Conference. It consists principally of a series of clarifying, technical, and non-controversial changes in the Bankruptcy Act, as analyzed in Appendix A hereto annexed. The Bankruptcy Subcommittee of the House held a hearing thereon on May 7, 1948, which was attended by Alfred Heuston, the then Chairman of your Committee, and by its present Chairman, representing the Section of Corporation, Banking and Mercantile Law of the American Bar Association.

All but one of the amendments contained in H.R. 5693 are non-controversial. The single exception (Section 13 of this bill) treats with Section 60a of the Bankruptcy Act, which will be discussed under the succeeding subdivision I (B) of this report.

This Section 13 was opposed by the then Chairman of your Committee upon the ground that Section 13, if enacted contemporaneously with, or subsequently to, the needed amendment to Section 60a (as contemplated in S. 826, H.R. 2412, and the first section of H.R. 5834, to be hereafter discussed), might result in extreme difficulty in statutory interpretation. H.R. 5693 passed the House, but, because of the presence of Section 13 in the bill and the fact that the Senate has already passed S. 826, it did not pass that body.

At the Seattle Convention of the American Bar Association in September 1948, its House of Delegates adopted the following resolution:

> "RESOLVED that the American Bar Association approves H.R. 5693 in substance, with the exception of Section 13 thereof."

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[1] The numbered references are to bills as introduced in the 80th Congress.

The reasons for its action, taken on the recommendation of its Section of Corporation, Banking and Mercantile Law, were stated as follows:

> "With the exception of Section 13, H.R. 5693 embodies a number of clarifying and non-controversial amendments to the Bankruptcy Act. However, Section 13 of the bill reenacts Section 60a of the Bankruptcy Act with a single slight conforming change. On the other hand, H.R. 2412 (identical with S. 826) was introduced pursuant to the resolution of the House of Delegates of October 30, 1946 and would amend Section 60a in a number of substantial remedial respects, as recommended by the Section of Corporation, Banking and Mercantile Law. It would therefore seem inadvisable to retain Section 13, dealing with the same Section 60a, in H.R. 5693, because if both H.R. 2412 and H.R. 5693 were concurrently enacted, or if the enactment of H.R. 5693 should follow the enactment of H.R. 2412, extreme difficulty in interpretation might result."

Your Committee therefore respectfully and unanimously recommends the adoption by the Association of the following resolution:

> "RESOLVED: that the Association of the Bar of the City of New York supports the enactment, in the 81st Congress, of the substance of H.R. 5693, provided that, in place of Section 13 thereof, there be substituted the substance of H.R. 2412 (S. 826) or the first section of H.R. 5834, in such form as may be approved by the Committee on Bankruptcy and Corporate Reorganizations."

(B)

H.R. 2412, S. 826, and H.R. 5834

These three bills must be considered together.

S. 826, introduced by Senator Ferguson of Michigan, and H.R. 2412, introduced by Representative Reed of Illinois, are identical, and were drafted and sponsored by a Special Committee of the American Bar Association on Section 60a of the Bankruptcy Act. Their purpose is to amend that section in order to obviate unanticipated injustices and confusions that have resulted from the 1938 amendment to that Section.

Specifically, as briefly as possible, the purpose of these bills is

(1) to retain unimpaired the basic object of the 1938 amendment, which eliminated the "relation back" doctrine of *Sexton* v. *Kessler* (225 U.S. 90) and the "pocket lien" doctrine of *Carey* v. *Donohue* (240 U.S. 430);

(2) to eliminate the evils of allowing a trustee in bankruptcy to take the position of a bona fide purchaser and to restore him to the position of a holder of a lien by legal proceedings, in harmony with his functions under the Bankruptcy Act; and

(3) in effectuation of that policy, to provide that no transfer made in good faith, for a new and present consideration, shall constitute

a preference to the extent of such consideration actually advanced, if the provisions of applicable state law governing the perfection of such transfer are complied with, with an appropriately rigid time limitation (30 days) for such perfection if such limitation is not itself prescribed by the applicable state law.

In order to outlaw the doctrine of the so-called "relation back" and "pocket-lien" cases, of which *Sexton* v. *Kessler*, supra, and *Carey* v. *Donohue*, supra, are respectively illustrative, the 1938 amendment placed a trustee in bankruptcy, for the purpose of timing an alleged preference, in the position not merely of an actual, but of a potential bona fide purchaser for value, whether or not such a purchaser in fact existed.

Passing the consideration that the object of the Bankruptcy Act is to protect creditors, the unforeseen result was to cast serious doubt upon the validity of all trust receipts, conditional sales agreements, chattel mortgages, factors liens, and assignments of accounts receivable, even though the relevant transactions were consummated for full value and in good faith (*Klauder* v. *Corn Exchange National Bank & Trust Company* [1943] 318 U.S. 434, 63 S.Ct. 679; In re *Vardaman Shoe Company* [E.D.Mo. 1943] 52 Fed. Supp. 562; *Matter of Rosen* [1946] 157 Fed. (2d) 997).

S. 826 and H.R. 2412 were therefore supported with virtual unanimity by your 1947–8 Committee and a number of other groups, including the American Bar Association; the American Bankers Association; the Chicago Bar Association; a number of state bankers groups; the Factors Legislative Committee; and the National Conference of Commercial Receivable Companies, Inc. They were opposed only by the Commercial Law League of America.

On March 30–31, 1948, Senator Wiley, Chairman of the Senate Judiciary Committee, and Senator Ferguson, the introducer of S. 826, held a hearing, at which the sponsoring and all of the supporting groups were present. The bill was reported favorably to the Senate by the full Judiciary Committee (Report No. 1514) and passed that body.

On May 7, 1948, the Bankruptcy Subcommittee of the House held a hearing upon the identical H.R. 2412, and one or the other of the two identical bills would probably, by this time, have become law but for the involvement in their consideration of a controversial provision requiring, as against a trustee in bankruptcy, the recordation of the assignment of accounts receivable contained in a bill (H.R. 5834), introduced on March 15, 1948 by Representative Sam Hobbs of Alabama, which the House Subcommittee took under consideration at the same hearing.

H.R. 5834 consists of three parts: Section 1 is the substance of S. 826 and H.R. 2412, with a clarifying and supplemental sentence suggested by Professor MacLachlan, a member of the American Bar Association's Committee, and to which, so far as your Committee is aware, there is no objection. Section 3 would extend the law of preference to proceedings under Chapter IX (treating with the bankruptcy of municipal corporations, etc.), whereas H.R. 2412 would not. There is no objection to the extension.

Section 2, however, would add a new Section 70i to the Bankruptcy Act, providing, in effect, for the compulsory recordation or notice-filing, as against a trustee in bankruptcy, of the assignment of accounts receivable. This last-mentioned proposal has been the subject of controversy, both on the state and the national level, for years. Twenty-nine states have taken action upon it in one form or another. Fifteen states[2] have rejected it by adopting the so-called "validation rule", which prevails in New York (*Fortunato* v. *Patten*, 147 N.Y. 277). Twelve[3] have adopted it. Two (Pennsylvania and Georgia), by the enactment of bookmarking statutes, have rejected both alternatives. In our own State of New York, the Law Revision Commission held a hearing upon the recordation proposal in December 1945, and, after subsequent study, rejected it. In any event, your Committee, as constituted in the 1947–8 year, rejected the recordation proposal on the national level.

At the Seattle Convention of the American Bar Association, the House of Delegates, upon the recommendation of the Section of Corporation, Banking and Mercantile Law, disapproved the proposal for the following stated reasons:

> "(a) It would restrict the flow of credit, especially to small business.
>
> (b) It is broadly opposed in the commercial and financial communities, and by many groups, representing divers and competitive interests.
>
> (c) The proposal has been rejected on the state level by 15 states (including most of the larger commercial ones); has been adopted by 12 of them; and therefore is contrary to the considered public policy of the majority of the states which have enacted statutes on the subject.
>
> (d) After study and the holding of a public hearing, it has also been rejected by the Law Revision Commission of the State of New York.
>
> (e) A proper regard for states' rights requires that the public policy of the states on a subject of this nature be respected; and
>
> (f) Mechanically, it would impose an undue burden upon the Clerks of the Federal Courts and would not accomplish the purpose of its enactment."

At the hearing before the House Subcommittee on Bankruptcy on 7th May, all of the groups mentioned on page 389, which supported S. 826 and H.R. 2412, also opposed H.R. 5834 and national recordation generally. The National Association of Credit Men and the Commercial Law League supported it.

Since your Committee did not deem itself bound by the action of the 1947–8 Committee, its presently constituted membership referred the matter

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[2] These 15 states are Arkansas, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon, Rhode Island, South Dakota, Virginia, and Wisconsin.

[3] These 12 states are California, Colorado, Florida, Idaho, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah, and Washington.

to its Subcommittee on General Bankruptcy, which studied it over the summer months and came to the same conclusion as did the American Bar Association. The matter was debated at length at the 6th October meeting of your Committee, which, by a vote of 9 to 7, approved the recommendation of the Subcommittee. The vote of your Committee's Chairman would have been with the majority, for the reasons above stated.

The minority view is that recordation is necessary in order to obviate the evils of secret liens, which constitutes the general object of the 1938 amendment to Section 60a, as declared in the *Klauder* case, and that, if Section 60a is to be amended, the recordation of accounts receivable, in the interests of general creditors, should go along with it. To this, the majority rejoins that recordation, or notice-filing, while apt for tangibles, should not be applied to intangibles; that more information is available to general creditors through financial statements, in the form universally required by credit agencies; and that, against such possible advantages as might be gained from recordation, must be weighed the credit and economic disabilities which would, competitively, be unjustifiably incurred by borrowers. Furthermore, on the national level, the majority entertains considerable doubt as to the practicability of recordation in the office of a Federal Court Clerk, particularly in the larger states where his office may be located at a considerable distance from either the borrower or his creditors.

Your Committee, therefore, respectfully recommends the adoption by the Association of the following resolutions:

> "RESOLVED: (1) that the Association of the Bar of the City of New York supports the enactment, in the 81st Congress, of the substance of Sections 1 and 3 in H.R. 5834; and
>
> (2) that the Association of the Bar of the City of New York disapproves the enactment, in the 81st Congress, of the substance of Section 2 of H.R. 5834."

II

CHAPTER XI

For nearly a year, your Committee has had under consideration the substantial revision of Chapter XI of the Bankruptcy Act, treating with arrangements.

Chapter XI, which was enacted in 1938, is an enlargement of the former Section 12, dealing with compositions, and now embraces all forms of composition-arrangements and extensions affecting unsecured debts, as distinguished from bankruptcy liquidations and corporate reorganizations under Chapter X. In the decade since it was enacted, Chapter XI has, on the whole, worked out well in the consummation of debt rearrangements, particularly in situations where the creditor body deemed a debtor worthy of being left in possession of his enterprise, and entitled to their consideration in the working out of his business rehabilitation. However, both in substance and administration, deficiencies have become apparent.

Accordingly, for more than a year, your Committee, both as previously and presently constituted, has given consideration to the problems so presented, through a subcommittee consisting of Messrs. Montgomery, Olney and Marx, who, after consultation with a number of other experts, presented a report (Appendix B) hereto annexed. This report was considered and approved by your Committee at the meetings of 21 April and 6 October, but it is only fair to say that credit for it is due entirely to the Subcommittee and the Retiring Committee Chairman, and not at all to its present Chairman.

For the reasons stated in the Subcommittee report, your Committee respectfully recommends the adoption by the Association of the following resolution:

> "RESOLVED: that the Association of the Bar of the City of New York recommends that Sections 324, 337 (2), 354, 355, 366, and 369 of the Bankruptcy Act be amended; that the present Sections 379 and 380 be respectively renumbered 380 and 381; that a new section, to be numbered 379, be inserted; that a new Section 328 be enacted; and that Section 64(b) and Section 70(h) be repealed—all as set forth in the report, dated April 15, 1948, of the Subcommittee on Chapter XI of the Committee on Bankruptcy and Corporate Reorganizations of this Association."

III

RETIREMENT OF REFEREE OLNEY

This report would be neither appropriate nor complete if it did not refer to the impending retirement of Referee Olney in his official capacity. His many years of unremitting service have lent lustre to bankruptcy administration in this district, and have contributed mightily to that sound administration of justice which is the firmest pillar of good government. But even more intimately, from the standpoint of his Committee colleagues, is our debt to him for the wisdom of his counsels and the spirit of tolerance and geniality with which he has enhanced our deliberations and made them so enjoyable. Despite his official retirement, we cherish the hope that he will continue as a member of our Committee until the expiration of his term, so that we may have the benefit of his learning and experience. In token of the Association's esteem of him, your Committee unanimously recommends the adoption by the Association of the following resolution:

> "RESOLVED: that upon the retirement of Honorable Peter B. Olney as Referee in Bankruptcy of the United States District Court for the Southern District of New York, The Association of the Bar of the City of New York records its deep appreciation for the outstanding contribution that he has made to bankruptcy administration in this district, and for his effective service upon its Committee on Bankruptcy and Corporate Reorganizations, and extends to him the Association's best wishes that there be vouchsafed to him many years, filled with all of the things that make for happiness; and be it further

RESOLVED: that the Secretary of this Association be directed to send to Referee Olney an engrossed copy of the foregoing resolution."

Respectfully submitted

MILTON P. KUPFER
Chairman

EDWARD J. KENN
Secretary

Dated: 27 October 1948

APPENDIX A

SUMMARY OF CHANGES TO BE ACCOMPLISHED BY H.R. 5693

SECTION 1: (*a*) Clarifies definition of "Petition" to include invocation of any relief under the Bankruptcy Act.

(*b*) Clarifies definition of "Transfer" to include retention of a security title to property delivered to a debtor as a transfer suffered by a debtor.

SECTION 2: Extends provisions of Section 2a(21) of the Bankruptcy Act concerning accounting of receivers, etc. appointed outside of bankruptcy to include Section 77 proceedings.

SECTION 3: Clarifies provisions of Section 7a(8) of the Bankruptcy Act requiring listing of business address or residence in schedules in Bankruptcy (instead of residence only).

SECTION 4: Clarifies provisions of Section 11a governing vacatur of stay of prosecution of a suit where, in a proceeding commenced within six years, the defendant has had relief under various provisions of the Bankruptcy Act.

SECTION 5: (*a*) Conforms Section 14c(5) to the change referred to in Item "Section 4".

(*b*) Clarifies the provision of Section 14e to identify the hearing as the one pertaining to objections to a discharge.

SECTION 6: Amends provisions of Section 18a relating to service of process by substituting method of service in a civil action for service commencing a suit in equity.

SECTION 7: Amends Section 21k by making applicable to proceedings under the Bankruptcy Act the Rules of Civil Procedure in place of rules of equity practice.

SECTION 8: Clarifies Section 29d of the Bankruptcy Act by providing that the statute of limitations with respect to the crime of concealment runs from the date of disposition of the bankrupt's right to a discharge.

SECTION 9: Clarifies provisions of Section 39a(9) concerning the duty of Referees to transmit to the clerk certain orders made by them.

SECTION 10: Amends Section 42a to require Referees to keep records in the manner directed by the Supreme Court (instead of in the manner kept in equity cases).

SECTION 11: Amends Section 57j of the Bankruptcy Act so as to deny interest on Tax Claims and certain other Governmental claims accruing after date of filing (except in case of a solvent estate); and Section 57n to eliminate certain unnecessary references to various Chapters of the Bankruptcy Act.

NOTE: The Supreme Court on October 11, 1948 granted a writ of certiorari to review *Saper v. City of New York* (168 Fed.(2d) 268) C.C.A., 2nd, 1948 (holding that no interest is payable on city sales and business taxes after filing of the petition). The petition for certiorari was based on the ground of conflict with a C.C.A. 1st decision (*Davie v. Green*, 133 Fed. (2d) 451, 1943).

SECTION 12: Inserts in Section 18a(8) provision respecting notices of applications for compensation by committees.

SECTION 13: Amends Section 60a so as to make law of preference applicable to proceedings under Chapter IX.

SECTION 14: Amends Section 63c to conform to the revised definition of "Petition".

SECTION 15: Amends Section 64a(1) to permit reimbursement of filing fees in voluntary bankruptcy proceedings, authorizes compensation from the estate for prosecution of criminal offenses under the Act, and provides priority for payment of bankruptcy expenses where bankruptcy supersedes a debtor-relief proceeding.

SECTION 16: Amends Section 67a (1) and (2), 67b, 67c, and 67d(2), (3), (4) and (5) to conform to revised definition of "petition".

SECTION 17: Amends Section 69d to confer upon the Bankruptcy Court jurisdiction to require Receivers, etc. in non-bankruptcy proceedings to account to a Receiver or Trustee appointed under the Act.

SECTION 18: Amends Section 70a to conform to revised definition of "Petition", and 70e(2) to confer jurisdiction on the Bankruptcy Court to preserve for the benefit of an estate a voidable transfer and to subrogate the Trustee to the rights of the Transferee; and repeals Section 70h.

SECTION 19: Amends Section 221a by adding a new paragraph authorizing a judge to fix a time for release of operations of a reorganized debtor, thus to make it possible to cut off further material modifications.

NOTE: In the Equitable Building reorganization, three conflicting views were expressed as to when rights vest—

(1) upon entry of the order of confirmation;
(2) when the plan has been substantially consummated; and
(3) upon entry of the final decree under Section 228. The amendment is designed to resolve this conflict in a practical way.

SECTION 20: Amends Section 222 to conform to the amendment to Section 221b.

SECTION 21: Amends Section 238(3) to provide a six months instead of

three months period for filing claims where bankruptcy supersedes a Chapter X proceeding.

SECTION 22: Adds a new Section 239 to Article XII of Chapter X dealing with the basis for participation in subsequent bankruptcy proceedings of new debts incurred by a debtor and prior provable unsecured debts (scaled down as provided in a plan).

SECTION 23: Clarifies description in Section 265a(11) of Order required to be sent to Securities & Exchange Commission.

SECTION 24: Amends Section 355 to conform with change described in Item "Section 21" above.

SECTION 25: Inserts a new Section 379 (renumbering seriatim sections 379 and 380 of the present Act) to conform Chapter XI to the changes in Chapter X contemplated in Item "Section 22" above.

SECTION 26: Amends Section 459 of the Bankruptcy Act to conform with changes described in Item "Section 21" above.

SECTION 27: Inserts a new Section 484 in Chapter XII (renumbering seriatim present sections 484 and 485) to conform Chapter XII to the pattern of Chapters X and XI as changes pursuant to Items "Section 22" and "Section 25" above.

SECTION 28: Amends Section 644 of the Act to conform to change described in Item "Section 21" above.

SECTION 29: Inserts a new Section 668 in Chapter XIII (renumbering seriatim present Section 668) to conform Chapter XIII to the pattern of Chapters X, XI and XII, as changed pursuant to Items "Section 22", "Section 25" and "Section 27" above.

APPENDIX B

REPORT OF SUBCOMMITTEE ON REVISION OF CHAPTER XI

(Deleted matter in brackets; new matter in italics.)

SECTION 324. Add at the end of the section, the following:

Provided, however, that the court may on application by the debtor grant for cause shown further time not exceeding ten days for the filing of the statement of the executory contracts of the debtor, the schedules and statement of affairs, if with the petition the debtor files a list of his ten largest creditors with their addresses and a summary of his assets and liabilities, but such time shall not be further extended except on such notice and to such persons as the court may direct.

(NOTE: The practice has grown up in the Southern District of New York of granting further time for the filing of the documents mentioned in the foregoing proviso despite the fact that Section 324 expressly requires that the statement of executory contracts, schedules and statement of affairs be filed with the petition. As a practical matter, it has been found impossible,

particularly in large cases, to comply with the mandatory provisions of the statute, and it is believed that the proposed amendment regularizing the practice in this district will tend to the more effective operation of the Chapter.)

Add a new Section 328 reading as follows:

Sec. 328. After the filing by a corporation of a petition under this chapter, any stockholder or creditor may, upon such notice to the debtor, the Securities and Exchange Commission, and such other persons as the judge may direct, apply to the judge for an order dismissing the proceedings on the ground that the interests of creditors or stockholders will be better subserved by a proceeding under chapter X of this Act, unless the petition be amended to comply with the provisions of said chapter X or a creditors' petition under said chapter X be filed. Upon the filing of such application, the judge shall summarily determine the issues raised thereby, and if he finds that the allegations therein made are sustained, shall make an order directing that the proceedings under this chapter shall be dismissed unless (1) either the petition be amended by the debtor within a time fixed by such order to comply with the requirements of chapter X of this Act for the filing of a debtor's petition, or within such time a creditors' petition be filed pursuant to the provisions of chapter X of this Act, and (2) there be paid to the clerk the additional filing fee of $70 as provided by section 132 of this Act. Upon the filing of such amended petition, or of such creditors' petition, and the payment of such fees, such new or amended petition shall thereafter, for all purposes, be deemed to have been originally filed under chapter X of this Act.

(NOTE: The foregoing amendment is designed to meet the situation created by the decision of the Supreme Court in the United States Realty Corporation case, in which a petition under Chapter XI was found to have been improperly filed because the debtor had securities which were publicly held and widely distributed. The petition for an arrangement in that case was dismissed after many months and the proceeding had to be started over again. Chapter X provides for a transfer of a Chapter XI proceeding to Chapter X (Sec. 147), but no corresponding provision is in Chapter XI. This amendment has been strongly advocated by the S.E.C. and approved by the National Bankruptcy Conference.)

Amend Section 337(2) to read as follows:

(2) fix a time within which the debtor shall deposit, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to the creditors, the money necessary to pay all debts which have priority, unless such priority creditors shall have waived their claims or such deposit, or consented in writing to any provision of the arrangement for otherwise dealing with such claims, and the money necessary to pay the costs and expenses of the

proceedings *and the actual and necessary expenses incurred in connection with the proceedings and the arrangement by the committee of creditors appointed under this Act and the attorneys or agents of such committee, in such amount as the court may allow, and the money necessary to pay for services rendered and actual and necessary expenses incurred by attorneys and agents for creditors, or by any committee of creditors, before or after the filing of the petition under this chapter but prior to the appointment of a committee under this Act, in such amount as the court may allow. Provided, however, that in fixing any such allowances to creditors, or to any committee, or to their agents or attorneys, the court shall give consideration only to services which contributed to the arrangement confirmed and to the proper costs and expenses incidental thereto; and*

(NOTE: Section 361 contemplates that an arrangement may be confirmed at the first meeting of creditors held pursuant to Section 336 of the Act. This provision was inserted in the statute for the express purpose of safeguarding against interference with out-of-court settlements by an insignificant minority of creditors actuated by ulterior motives. In such a situation, an out-of-court settlement having been agreed upon, if a small minority refuses to cooperate, the debtor may file an arrangement petition and the acceptances to the plan previously worked out out of court may be filed in the arrangement proceeding, and the arrangement immediately consummated. Under these circumstances the attorneys and agents of an informal committee who have carried on the successful negotiations with the debtor leading to the arrangement, cannot be compensated because they are not the official committee provided for by Section 338 of the Act. Under the decision in the Second Circuit in the Haitian Corporation case, only the official committee can be compensated.

Even when the arrangement is not confirmed at the first meeting of creditors, it frequently happens that, pending the election of the official committee which may be weeks or months after the initiation of the proceedings, the creditors have organized, and employed accountants and agents who have performed substantial services beneficial to the plan eventually confirmed. Under the Haitian decision, these agents and attorneys cannot be compensated. The result is a tendency of attorneys to refuse to serve creditors unless an arrangement proceeding is instituted, and then only after the official committee has been appointed. In view of the fact that under Chapter XI the debtor remains in possession, the active intervention in the proceeding of individual and organized creditors is essential to the protection of the creditors' interests. The amendment proposed is designed to cure these defects in the Act and to improve its administration. It increases the category of the persons who may be compensated, but the amount of the compensation must in any case be fixed by the court.)

Amend Sections 354 and 355 to read as follows:

SEC. 354. If the time for filing claims in a pending bankruptcy pro-

ceeding has expired prior to the filing of a petition under this chapter, claims provable under section 63 of this Act, and not filed within the time prescribed by subdivision n of section 57 of this Act, shall not be allowed [in the proceedings or participate in an arrangement under this chapter, and shall not be allowed] in the bankruptcy proceeding when reinstated as provided in this chapter *but the expiration of such time prior or subsequent to the filing of a petition under this chapter shall not bar such claims from participating in an arrangement under this chapter.*

SEC. 355. Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only such claims as are provable under section 63 of this Act shall be allowed and, except as provided in section 354 of this Act, claims not already filed, *including all claims of the United States and of any State or subdivision thereof, shall* [may] be filed within [three] *six* months after the first date set for the first meeting of creditors held pursuant to section 55 of this Act, or if such date has previously been set, then within [three] *six* months after the mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with.

(NOTE: The amendment to Section 354 is designed to permit creditors whose claims have been scheduled in a pending bankruptcy proceeding prior to the filing of a Chapter XI petition, to participate in the arrangement even though they failed to file claims in the prior bankruptcy proceedings within the six months allowed by Section 57n. In an arrangement proceeding, all scheduled creditors participate whether they file claims or not, and there is no apparent reason why they should be barred where the arrangement follows bankruptcy, merely because they failed to file claims within six months. There is no six-month limitation in Chapter XI, but claims may be filed at any time until the entry of the order of confirmation.

The amendment to Section 355 is designed to make it clear that the bar date therein specified is applicable to governmental claims as well as other claims, and to make the time for filing claims uniform in all instances.)

Amend Section 366 to read as follows:

SEC. 366. The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors *and is feasible;*

[(3) it is fair and equitable and is feasible;]

(3) [4] the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

(4) [5] the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this Act.

It shall not be a bar to the confirmation of an arrangement that the interests of a debtor who is an individual or of the stockholders of a debtor which is a corporation will thereby be preserved even though the arrangement does not provide for payment in full of the claims of creditors.

(NOTE: The fair and equitable rule as interpreted in the Boyd and Los Angeles Lumber Co. cases, cannot be realistically applied in Chapter XI. Were it so applied, no individual debtor could ever effectuate an arrangement except by payment of the claims of all creditors in full. The same is true of a corporation where stock ownership is substantially identical with management. Chapter XI is a substitute for the old composition procedure under former Section 12 where the fair and equitable rule did not apply, and there seems to be no good reason why it should apply in Chapter XI.)

SECTION 369. This section contains a reference to "the provisions of Section 352 of this Act". This reference is an obvious error. The reference should be to Section 354 of the Act.

Renumber present Section 379 as Section 380, and Section 380 as Section 381, and insert in numerical order the following new section:

SEC. *379. Where after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—*

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters I to VII, inclusive, of this Act, shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application,

the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

(NOTE: The foregoing amendment is one recommended by the National Bankruptcy Conference and is incorporated in a bill now pending before Congress. A similar amendment has been proposed to Chapter X of the Act. It is proposed to repeal Section 70h and Section 64b. Paragraph (1) is added to replace what is needed to be saved from Section 70h, and paragraph (2) replaces Section 64b, which it is intended to repeal, at the revised level of sharing in the bankruptcy distribution.

W. RANDOLPH MONTGOMERY (Chairman)

and

PETER B. OLNEY

Dated, April 15, 1948

COMMITTEE ON MEDICAL JURISPRUDENCE

REPORT ON PROPOSED LEGISLATION FOR REHABILITATION OF ALCOHOLICS*

In recent years there has been a great increase in the study of alcoholism and a demand for public action in the matter of the treatment and rehabilitation of alcoholics. There has been a growing recognition of alcoholism as a disease rather than as a crime, and it has become obvious that there is an urgent necessity for the revision of present laws and statutes relating to alcoholism and its attendant social problems.

During the past year the Committee on Medical Jurisprudence has given intensive study to the medico-legal aspects of alcoholism. This study has been carried out jointly with the Committee on Public Health Relations of the New York Academy of Medicine. The respective Committees have formed Subcommittees charged with the preparation of appropriate legislation to modernize the pertinent New York Laws on this subject. The members of the Legal Subcommittee, Edmund T. Delaney, Chairman, and David F. Freeman, Hugh J. Grant and Charles W. Lewis, have worked hand in hand with the Academy's Subcommittee, whose Chairman, Dr. Hubert S. Howe, and whose members, Drs. Ruth Fox, Morris Herman, George H. Hyslop, Shepard Krech and E. H. L. Corwin, has given generously of their time and professional advice on this important topic. After an initial meeting in November of last year, further joint meetings were held in February, April, May and November of this year.

The traditional approach to the problems of the alcoholic has been from

* This report will be submitted to the Stated Meeting of the Association, December 14, 1948.

the viewpoint of punishment rather than that of treatment of a disease. Until the turn of the century, intoxication was dealt with through charges involving disorderly conduct or vagrancy. It was not until 1910 that New York passed a statute which went beyond the mere punitive aspect of the problem. In that year, through an amendment to the Inferior Criminal Courts Act, the City of New York was given the power to establish a Board of Inebriety and a hospital and industrial colony for persons convicted of an offense described as "public intoxication." In 1911, a general statute was enacted in the State of New York (Section 1221 of the Penal Law) which was to apply to the rest of the State (since the City of New York had already its own legislation) and which created the offense of public intoxication. At the same time, the General Municipal Law was amended by the addition of Sections 136–139b providing for the establishment of "Boards of Inebriety" by localities outside New York City desiring them. Under these sections, a board so created was empowered to establish hospitals and industrial colonies in which persons convicted of public intoxication might be committed.

The only other provisions concerning alcoholism in the New York statutes are to be found in Section 201 of the Mental Hygiene Law which permits an alcoholic to be committed to a private licensed institution by a judge of a court of record. This section does not permit the confinement of an alcoholic who cannot defray the expenses of private care to a public institution and, in fact, as a practical matter, there are no public institutions that are equipped to handle the commitment of alcoholics on a scientific medical basis. Finally, it might be mentioned that Section 804 of the Education Law provides for the compulsory teaching of the evil effects of alcohol in schools.

The foregoing reference to the applicable statutes in New York will show that the problem of alcoholism has not been covered by adequate statutory law and that such statutes as have been enacted have been piecemeal, incomplete and have not been drawn with any medical or scientific approach to the problem.

The experience of the City of New York in dealing with the problem under the enabling legislation previously referred to is an illustration of the inadequacy of the present legal treatment of alcoholism. In 1911, a hospital and colony was established at Warwick, in Orange County, by the Board of Inebriety, but only one report was ever filed on the colony, the first report. In 1920, after the enactment of prohibition, the Board was abolished and the colony at Warwick was closed. The powers and duties of the Board were transferred to the Department of Correction—evidence of the punitive approach—and apparently no further action has been taken by the Department of Correction except insofar as the penitentiary on Riker's Island receives a number of alcoholics sentenced on various charges.

As a result of the work undertaken by the Committee, there has been drafted a proposed statute which is set forth in Appendix A hereof. This statute was prepared by the Subcommittee in conjunction with the Subcommittee of the Academy of Medicine. It has formally been approved by the Committee on Medical Jurisprudence and by the Subcommittee of the

Academy, and it is to be submitted to the whole Committee of the Academy on December 6, 1948 with recommendation for its approval. Thereafter it is hoped to introduce the bill into the state legislature.

The proposed statute is designed to provide for treatment of chronic alcoholics or compulsive drinkers on the basis of the recognition of alcoholism as a disease and consequently as a medical problem. This would have the effect of taking the problem out of the corrective or penal category in which it has generally heretofore been considered. Provision would be made for the establishment of hospitals, clinics and farms by the state authorities and for the certification of chronic alcoholics in such institutions or in approved private institutions for treatment.

In the course of their work the Subcommittees studied legislation presently being introduced in a number of other states and met with various experts in the field in order to solicit their views and comments. The proposed statute, however, has not as yet been generally distributed to all interested organizations as it was felt that the program would be expedited by restricting the actual drafting to the two Subcommittees. Accordingly, it is to be pointed out that the Committees do not consider the proposed statute as a model statute but rather as a general codification of ideas and suggestions resulting from joint meetings of the Subcommittees so that there would be available a measure in concrete form to be introduced into the legislature. It has been expected, and indeed it is hoped, that the proposed bill will stimulate further discussion and comments from other agencies, including medical societies, bar associations and organizations such as The Research Council on Problems of Alcohol, and Alcoholics Anonymous, as well as from the Department of Mental Hygiene itself, so that the final bill will prove to be workable and satisfactory as far as possible to all groups. Any legislation in this field must necessarily be experimental in nature and only experience and results will tell whether the bill will be able to provide the criteria by which the legislation will be finally judged.

In the actual drafting of the bill the Subcommittees followed as closely as possible the pertinent provisions of the Mental Hygiene Law since it is proposed that the program be under the Department of Mental Hygiene. There were many occasions where the Subcommittees felt that improvements might be made in the provisions and procedures of the Mental Hygiene Law, but it was not deemed feasible at this time to attempt to revise such procedures. When, in the course of time, these procedures are revised as to the mentally ill, similar revisions will necessarily have to be made in the case of alcoholics.

In its last annual report, the Prison Association of New York urged that the problem of the chronic alcoholic be separated from the old idea that it is a penal problem and recommended an amendment to the Mental Hygiene Law to provide for certification of chronic alcoholics to public institutions. In September of this year the establishment of a state institution or farm for the treatment of habitual alcoholics was recommended by the New York State Association of Magistrates. In October it was announced by Dr. Frederick

MacCurdy, State Commissioner of Mental Hygiene, that the Department would appropriate funds to assist in setting up a mental health research clinic in Buffalo for the study of alcoholism. Dr. MacCurdy also stated that it was hoped that this project would lead to the establishment of greatly needed rehabilitation centers for alcoholics. With the enactment of some statute along such lines, it is hoped that the State of New York will take its place among those other states that have recognized the importance of a program to cope with the problem of chronic alcoholics or compulsive drinkers.

RECOMMENDATION

The Committee therefore recommends that the following resolution be enacted.

> RESOLVED, that this Association approves of the report of the Committee on Medical Jurisprudence and recommends the adoption of appropriate legislation which would establish procedures for the certification and treatment of alcoholics through state institutions established by the Department of Mental Hygiene and in private institutions in conformity with the principles of the proposed statute appended to the report of the Committee.

Respectfully submitted,

COMMITTEE ON MEDICAL JURISPRUDENCE

George H. Sibley, *Chairman*	Julius Isaacs
Joseph H. Choate, 3rd	Dorothy Kenyon
Cecil I. Crouse	Charles Watkins Lewis
Robert E. Curran	William T. Maday
Edmund T. Delaney	Margaret Mary J. Mangan
David F. Freeman	Baldwin Maull
Hugh J. Grant	Benjamin R. Shute
James F. Hoge	Paul W. Williams

APPENDIX A

STATE OF NEW YORK

AN ACT

To amend the Mental Hygiene Law in relation to authorizing the creation of a state rehabilitation bureau for alcoholics, providing for its management, personnel, powers and duties with respect to the rehabilitation of alcoholics through medical and scientific treatment, the promotion of temperance and for other purposes

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The Mental Hygiene Law is hereby amended by renumbering the

present Article 10 entitled "Laws repealed, when to take effect," to Article 11 and by inserting therein a new article, to be Article 10, to read as follows:*

ARTICLE 10

§210. This article shall be known as the alcoholics rehabilitation law.

§211. Definitions:

The following words and phrases as used in this article shall have the following meanings, unless the context otherwise requires:

1. "Alcoholic" means any person who is incapable or unfit properly to conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or others or has lost the power of self control through the periodic, frequent or constant use of alcohol.

2. "Alcoholic beverage" or "beverage" means and includes all alcohols, spirits, liquor, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being.

3. "Department" means the Department of Mental Hygiene.

4. "Commissioner" means the Commissioner of Mental Hygiene.

5. "Physician" means a person authorized by law to practice medicine in this state.

6. "Hospital," "clinic," "approved institution," "custodial institution" or "farm" mean institutions for the care and treatment of the sick and injured established or approved and licensed by the department as qualified for the custody and treatment of alcoholics.

7. "Alcoholism" has reference to any and all conditions of abnormal behavior or illness resulting directly or indirectly from the use of alcoholic beverages.

8. "Patient" means a person certified under the provisions of Section 213 of this Article, or a person who voluntarily submits himself or herself for treatment in accordance with the provisions of Section 213 hereof.

9. "Rehabilitation" means the restoration of the alcoholic to normal and comprises measures for the purpose of controlling the alcoholic and restoring him to a normal state.

§212. Bureau of Alcoholic Rehabilitation; personnel; powers and duties.

1. There is hereby established in the department a bureau of alcoholic rehabilitation, the head of which shall be the director, who shall be appointed by the commissioner.

It shall be the duty of the department, acting by or through the bureau of alcoholic rehabilitation or the director of alcoholic rehabilitation, to enforce all the provisions of this article and all the rules, regulations and determinations made thereunder.

The director of the bureau of alcoholic rehabilitation shall devote his entire time and capacity to the duties of his office. The director, subject to the approval of the commissioner, shall have the power to appoint qualified physicians, nurses, chemists, research workers, and other persons needed to carry out the purposes of this article, whose appointments and positions shall be subject to the rules of civil service.

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* Footnote: For further information as to sections repealed, see note at end of Article.

2. The Commissioner shall have an advisory board to consist of the director and eight members, two of whom shall be physicians designated by the Medical Society of the State of New York, one of whom shall be an attorney designated by the New York State Bar Association, one of whom shall be designated by the State Alcoholic Beverage Control Board, one of whom shall be designated by the Commissioner of Social Welfare, one of whom shall be designated by the Commissioner of Correction and two of whom shall be appointed at large by the Governor.

The members of the advisory board, other than the director, shall hold office for a term of four years, except that at the time of the initial appointment, two members shall be designated by lot to serve for one year, two members for two years, two members for three years and two members for four years. The members of the board may succeed themselves.

The members of the advisory board shall meet every three months or more frequently at the call of the director who shall be the presiding officer thereof, and five members shall constitute a quorum. The members of the board, other than the director, shall receive a per diem compensation of $—— and shall be reimbursed for their actual and necessary expenses in connection with the work of the board.

The commissioner, with the approval of the advisory board, is hereby authorized and empowered to make all needful or helpful rules, regulations and determinations which in his judgment may be necessary or proper to supplement the provisions of this article or to effectuate the purposes and intent thereof or to clarify its provisions so as to provide the procedure or details requisite in his judgment to secure effective and proper enforcement of its provisions, which rules, regulations and determinations, when so made and promulgated by the commissioner shall become part of the rules and regulations of the department, and until modified or rescinded, shall have the force and effect of law.

Duties of the Director:

3. The director shall consult and work in conjunction with medical societies, recognized scientific organizations, institutions of learning and any other agencies able to assist in the study of all matters pertaining to the causes, extent, prevention, control, and treatment of alcoholism, the rehabilitation of chronic alcoholics, the prevention of the excessive and abusive use of alcoholic beverages, and the promotion of temperance.

4. The commissioner is hereby authorized and directed to establish and equip hospitals, clinics, custodial institutions or farms in connection either with existing hospitals or with other institutions or independently with the facilities for the diagnosis, classification, hospitalization, confinement, and treatment of persons who are found to be alcoholics as hereinafter provided. For such purposes the commissioner, with the approval of the governor, shall select and acquire by purchase or condemnation or by appropriation in the manner provided in Article 3 of the Mental Hygiene Law suitable sites for such hospitals, clinics, custodial institutions, or farms and shall cause to be prepared plans and specifications therefor, and shall proceed to construct and equip such hospitals, clinics, custodial institutions, or farms within the amounts appropriated by the legislature therefor.

5. The director, or a duly designated assistant shall have the power to inspect and examine any hospital, clinic, custodial institution, farm or other place in which alcoholics are received, cared for and treated and to recommend to the commissioner for approval and licensing any such hospital clinic, custodial institution, or farm as a place qualified for the custody and treatment of alcoholics who may be certified thereto as hereinafter provided. As evidence of such approval, the Commissioner shall issue a license.

§213. Voluntary admission of patients; certification; procedure; discharge; probation.

1. Voluntary admission.

Pursuant to rules and regulations established by the commissioner, the director, or person in charge of any approved institution for the care and treatment of alcoholics, may receive and retain therein as a patient any person suitable for care and treatment, who voluntarily makes written application therefor on a form prescribed by the commissioner, or if such person be under twenty-one years of age, such written application may be made by the parent or legal guardian or next-of-kin of such person. In the discretion of the director of the approved institution, such person may be detained for a period not exceeding sixty days for the purpose of such care and treatment and thereafter until fifteen days after receipt of notice in writing from such person of his intention or desire to leave such approved institution, or, if such person be under twenty-one years of age, until fifteen days after receipt of notice in writing, stating such intention or desire of the person who made the application for admission. The director of the approved institution or the physician in charge shall, within ten days after the admission of a patient by such voluntary agreement, forward to the office of the department a record of such patient in accordance with the provisions of section twenty-one of this chapter, and such rules and regulations as may be established.

It shall be the duty of the department to examine each record and determine the classification of the patient. The decision of the department shall be forthwith complied with by the director of the approved institution or by the physician in charge of such institution. Any failure to conform to the requirements of this section shall be considered a sufficient cause for revocation of a license theretofore issued to a private institution.

No person who voluntarily submits himself for admission and treatment in such a hospital or clinic shall forfeit or abridge thereby any of his rights as a citizen of the United States or of this State, nor shall the fact that he has submitted himself to any study, treatment, or guidance be used against him in any proceeding in any court, except by court order. The record of any application, under this section, by any individual for admission and treatment, guidance or help furnished to any individual admitted in the hospital or clinic under this section shall be confidential, and not be divulged except by court order.

2. Certification of alcoholics.

A. The judge of a court of record in the county or district where an alleged alcoholic resides, or a judge of any court of record, may certify such person to any approved institution for alcoholics, in the manner hereinafter provided in Subsection B below and subject to the conditions therein stated, upon a proper application and upon the consent in writing of the director or person in charge of such approved institution, upon a certificate in writing made, executed, and verified by at least two certified examiners, as defined by Section 19 of the Mental Hygiene Law, showing that such person is over the age of eighteen years, and is incapable or unfit properly to conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or others by reason of periodic, frequent or constant drunkenness, induced by the use of any alcoholic beverage. Such certificate must further show that such person is in actual need of special care and treatment, and that his detention, care and treatment in such institution would improve his health. Such certificate shall also specifically state the facts, circumstances and results upon which the judgment of each examiner is based. It must appear upon the face of each certificate that the examiner executing the same has made an examination of the

alleged alcoholic and that such an examination has been made by the examiner within ten days prior to the application for the certification.

B. Any person with whom an alleged alcoholic may reside or at whose house he may be, or the husband or wife, father or mother, brother or sister, or the child or committee of an alleged alcoholic, or the nearest relative or friend available, or an officer of any well-recognized charitable institution or home, or any public welfare officer of the town, or commissioner of public welfare of the county in which such person may be, or the alleged alcoholic himself, may apply for an order certifying such person to an approved institution for alcoholics by presenting a brief petition containing a statement of the facts because of which the application for the order is made and the name of the institution to which it is proposed that the alcoholic be certified. Such petition shall be accompanied by the certificate of the certified examiners and the consent of the director or person in charge of such approved institution as prescribed in the preceding section. Unless the alleged alcoholic makes the petition, notice of the time and place of making such application shall be served personally upon the alleged alcoholic at least one day before the date therein specified upon which application will be made. A copy of the petition shall be served with such notice. The judge or justice before whom such application is made shall, in his discretion, direct the service personally or by mail of a like notice upon the husband or wife, father or mother, or next of kin, of such alleged alcoholic. At the time and place mentioned in such notice or at such other time or place as the judge or justice may designate, said judge or justice shall proceed to hear the testimony introduced for and against such application, and may, in his discretion, examine the alleged alcoholic. Such judge or justice may, in his discretion, require proofs in addition to the petition and certificate of the examiners. If, from the facts ascertained upon the hearing, the proofs produced, and the petition and certificates presented, the judge or justice shall determine that such person is an alcoholic, and that his detention in such approved institution would improve his health, the judge shall grant an order certifying such person to such institution, to be detained therein for a period not exceeding 12 months, or for such period less than 12 months as may be necessary in the judgment of the director or person in charge of such approved institution for the proper treatment and cure of such person, or until discharged therefrom prior to the expiration of such period, as hereinafter provided. The director or person in charge of such approved institution may grant a convalescent status to a patient in accordance with rules prescribed by the director.

C. A person certified pursuant to this section or any relative or friend in his or her behalf, may within thirty days after any order of certification is granted as provided in the preceding section apply to a justice of the supreme court other than the justice making the certification for a review of such order. Such justice shall thereupon cause a jury to be summoned as in the case of the proceedings for the appointment of the committee for a mentally ill person, and shall try the question of the alcoholism of such person in the manner provided by law for the proceedings for the appointment of such committee. If the verdict of the jury be that such person is an alcoholic, said justice of the supreme court to whom such application was made shall attest that fact and remand such person to the care and custody of the said institution. Proceedings under a certification under this section shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court made upon notice and after a hearing, containing a provision for such temporary care or confinement of the alleged alcoholic as may be deemed necessary. Upon the refusal of a judge to grant an application for the certification

of an alleged alcoholic the judge shall state his reasons for such refusal in writing, and the person making the application may apply to a justice of the supreme court in the manner specified in this section where an application is made in behalf of the alleged alcoholic, and a certification may be had after a verdict by a jury as provided herein.

D. If a writ of habeas corpus be obtained in behalf of a person certified to such an institution, and if it appears at the hearing on the return of such writ that such person may properly be discharged, the judge or justice before whom the hearing is had shall so direct; but if it shall appear that the condition of such person is such as to render further treatment desirable, such person shall be remanded to the care and custody of such institution.

E. At the request in writing of the person in charge of an approved institution, the commissioner may, upon his order, transfer to another approved institution for alcoholics any alcoholic certified in accordance with this section, provided, however, that the person in charge of such other approved institution shall consent in writing to such transfer. Such order and such transfer should not be interpreted as extending the term of the original certification.

3. Emergency admission on incomplete court order.

Notwithstanding the requirements of subsection 2 above that an alleged alcoholic be duly admitted by an order of the court, in a case where the condition of such person is such that it would be for his benefit to receive immediate care and treatment, or where there is no other proper place available for his care and treatment, or if he is dangerous by virtue of his condition so as to render it necessary for public safety that he be immediately confined, he may be forthwith received by an approved institution authorized by law to care for alcoholics upon a certificate, executed by two certified examiners after examination and upon a petition as provided in subsection 2 above and upon the consent of the director or person in charge of such institution. By virtue of such certificate and such petition, such alleged alcoholic may be retained in such institution for a period not to exceed ten days, from and inclusive of the date of the certificate unless prior to the expiration of such time an order admitting him for care and treatment shall have been obtained in the manner provided by subsection 2 above, or unless he be admitted under the provisions of subsection 1 above. The director or person in charge of any such institution may refuse to receive such alleged alcoholic upon such certificate and petition, if in his judgment the reasons stated in the certificate are not sufficient or the condition of the patient is not of such character as to make it necessary that the patient should receive immediate treatment.

4. Person accused of crime or an offense.

Any court having jurisdiction of a defendant who is a prisoner in a criminal action or proceeding or accused of an offense, if he is found guilty of such crime or such offense and if it appears that the defendant is an alcoholic, may commit such defendant to any institution established by the department for observation and withhold sentence pending the period of such observation but not exceeding fifteen days. At the expiration of the term of commitment, or at such time as the director shall certify to the committing court that such person has been sufficiently treated or is not in need of treatment, whichever shall be the sooner, the director of such institution shall return such person to await the further action of the court unless the director of such institution recommends to the court prior to the expiration of the term of such commitment that such person is in need of additional treatment in such institution in which event with the approval of the committing court, the director will institute certification proceedings pursuant to Section 2 of this article,

pending which the court may order the person recommitted for an additional period not to exceed ten days. In the event that such person is not certified to such institution pursuant to the provisions of section 2, such person shall thereupon be remanded to the committing court to await its further action. In the event that such person shall be so certified, at the expiration of the term of certification or at such time as the director shall certify to the certifying court that such person has been sufficiently treated, or give any other reason which is deemed by the court to be adequate or sufficient, whichever shall be the sooner, such person shall be remanded to the committing court to await its further action.

5. Probation.

The director of any approved hospital, clinic, custodial institution or farm may permit any alcoholic committed to his care and custody to go at large without custody or restraint, for such time and under such conditions as he shall judge best, provided that this section shall not apply to persons who have been certified after the conviction of a crime.

§214. The liability of relatives for care, maintenance and treatment of alcoholics under this article shall be governed by Section 24 of the Mental Hygiene Law.

§215. Constitutionality.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

§216. Repeal of inconsistent laws.

All acts or parts of acts which are inconsistent with the provisions of this Article are hereby repealed.

§217. Effect.

This Article shall take effect immediately.

NOTE: Appropriate provision would also be made to repeal Sections 201 and 202 of the Mental Hygiene Law insofar as to relate to alcoholics and to revise Section 204 by specifically providing that its provisions would apply to any alcoholic certified under the proposed new Article 10. Likewise, (Section 1221 of the Penal Law relating to public intoxication and) Sections 136–139B of the General Municipal Law relating to the establishment of boards of inebriety and colonies would be repealed.

The Library

SIDNEY B. HILL, *Librarian*

SELECTED MATERIALS ON CENSORSHIP AND OBSCENITY

Coincident with the growth of the realistic school of writing there has developed a sizeable literature which has provided the basis for censorship and regulatory measures. The United States and all of the forty-eight states have passed legislation which imposes a penalty on obscene publications, and under which there have been some notable decisions. The latest one was decided on October 25, 1948 by the United States Supreme Court in the case of *People of the State of New York* vs *Doubleday & Co.* ("Memoirs of Hecate County.") Both sides were represented by members of the Association.

Now that mass communications has come into its own, problems of censorship concerning radio, movies and the press have become very vexing and persistent. Another phase of censorship which affects the libraries very directly is the screening of books for subversive ideas, through the appointment of censorship boards. Perhaps the words of President James B. Conant of Harvard University at the Herald Tribune Forum may be cited as a guide to such committees; "We study cancer to learn how to defeat it. We must study the Soviet Philosophy in our Universities for the same reason."

The members of the legal profession have a real interest in this subject because they are called upon to assist in the interpretation and construction of these statutes. This list has been compiled to assist members who may be interested in consulting the literature on this subject.

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